

CRS Report for Congress

Postal Service: How H.R. 22 Would Change Current Law

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ABSTRACT

On September 24, 1998, the Subcommittee on the Postal Service, House Committee on Government Reform and Oversight, agreed to a bill aimed at giving the U.S. Postal Service greater flexibility to meet increasing competitive pressure, but also at ensuring fair competition and protecting the public interest. A major change would be the institution of an entirely new rate-setting process. This report **summarizes** the provisions of H.R. 22 as amended and agreed to by the Subcommittee, and compares them with current postal law where appropriate. The report will be updated as significant legislative action occurs.

Postal Reform: Subcommittee's Proposal

Summary

The U.S. Postal Service (USPS) has come under increasing competitive pressure. It has had difficulty adjusting; shortcomings in and dissatisfaction with its service have resulted. New technologies, increased competition in the delivery of communications and parcels, the burden of public service, statutory constraints on operational flexibility, and flaws in operational performance have all been factors.

To improve the statutory **framework** of the Postal Service, the Subcommittee on the Postal Service of the House Committee on Government Reform and Oversight agreed September 24, 1998, to an amended bill originally introduced by Representative John M. McHugh, subcommittee chairman. That bill, H.R. 22, aims to give the U.S. Postal Service greater flexibility to compete, but also to ensure fair competition and protect the public interest.

One type of change that would be made entails organizational and management attributes. The proposal would redesignate the Postmaster General as Postmaster General and Chief Executive Officer, and the USPS Board of Governors would be called the Board of Directors. The USPS Inspector General would be appointed by the President. A formal selection procedure and list of qualification requirements for USPS Directors would be established.

A second type of proposed change relates to the operational flexibility of the Postal Service (other than rate setting). Among provisions giving greater freedom are the relaxation of restrictions on contracting for surface and international air transportation of mail, granting of permanent authority to employ postal police, and allowing the USPS to retain monetary recoveries of asset forfeitures in specified instances. Several other proposed "operational" changes, however, aim at preventing the Postal Service from using its monopoly status and rulemaking authority to engage in unfair competition. This includes precluding the Postal Service from using its role as U.S. representative in international organizations to its commercial advantage, and subjecting the USPS to federal, state, and local laws much more than presently.

A third, and major, type of change would be the institution of an entirely new rate-setting process in which postal services ("products") would be grouped into competitive and non-competitive categories. Non-competitive products would be subject to price-cap regulation, in which a set of "baseline" prices is established by a formula that provides for productivity change, and those prices could not be exceeded for 5 years. The USPS would have wide discretion to price competitive products, and be authorized to distribute profits to officers and employees if performance goals are met. The Postal Rate Commission, redesignated Postal Regulatory Commission, would be given more power to obtain information **from** the Postal Service and others, and its authority in reviewing rates for competitive products would be considerable.

The proposal also would potentially narrow the scope of USPS' monopoly by **specifying** that a "letter" may be carried out of the mail when the amount paid for private carriage is at least six times the postage for the first ounce of first-class mail.

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Postal Reform: Subcommittee's Proposal

Setting and Scope

In the past decade or so, the U.S. Postal Service (USPS) has come under increasing competitive pressure. It has had difficulty adjusting; and, consequently, there have been shortcomings in and dissatisfaction with its service. This is mostly the result of new technologies and increased competition in the delivery of communications and parcels, but probably also because of the burden of public service placed upon the USPS, statutory constraints on its operational flexibility, and flaws in its operational performance.

The Postal Reorganization Act of 1970 (P.L. 91-375) converted (effective **January 1, 1971**) the then existing Post **Office** Department into the quasi-independent U.S. Postal Service. The USPS is mandated to provide mail service on a business-like, self-sustaining basis with some government oversight. Compared with the pre-1971 period, the Postal **Service** has improved its financial performance in that it has not received any subsidy since the early **1980s**,¹ and it has registered operating surpluses in the last four completed fiscal years (1995-1998). Delivery reliability and promptness, poor in the late 1980s and early **1990s**, has improved considerably.

However, the USPS cannot make many important business decisions — such as price setting, service innovations, and facility closures — without lengthy review in a framework that differs in several respects from that in which a private firm makes its decisions. Whereas private firms set prices based upon their costs and the demand for their services, leading to economic efficiency, the Postal Service is additionally required to take account of social externalities, equity, and considerations of political feasibility. It is required to provide the basic service of “**bind(ing)** the Nation together through the personal, educational, literary, and business correspondence of the people.” The general framework in which the Postal Service must work **affects** the markets in which it competes and the behavior of its competitors. In addition, the Postal Service has labor-management problems. Some of its efforts to introduce new products and services have been fought by competitors and/or struck down as illegal. These and other causes of USPS' operational problems have been cited by critics, supporters, and postal **officials**.²

¹The USPS receives small appropriations to compensate it for certain services the law requires it to render without charge, or at reduced rates, to certain groups of mail users.

²**For** analyses — economic and organizational — of USPS' **difficulties** and of options for improvement, see U.S. Library of Congress. Congressional Research Service. *Mail Service in the United States: Exploring Options for Improvement*. **CRS** Report 95-1 105 E, Coordinated by Bernard A. Gelb. Washington, 1995. 78 p.

Legislation

In an effort to update and improve the statutory framework of the Postal Service, Representative John M. McHugh, Chairman of the Subcommittee on the Postal Service, House Committee on Government Reform and Oversight, initiated in 1995 a series of public hearings and requests for comments on the issue, and has put forward three legislative vehicles: H.R. 3717, The *Postal Reform Act of 1996* (104th Congress), H.R. 22, The *Postal Reform Act of 1997* (105th Congress), and an amendment in the nature of a substitute for H.R. 22. All three vehicles would give the Postal Service greater flexibility to compete than allowed by current law.

The major thrust of the Chairman's "amendment" is to establish a new **rate-setting** regime that explicitly distinguishes between non-competitive services (in which the USPS has a monopoly) where the Postal Service would have very limited pricing discretion, and competitive services (non-monopoly) where the Postal Service would have wide pricing discretion. It differs from the previous two vehicles mainly in that it pays greater attention to trying to ensure fair competition and to protect the public interest. It reflects the most recent commentary and other input by the public and members of the mail community.

Amendments offered by subcommittee members Davis, Fattah, and **Gilman** were adopted with the Chairman's encouragement. They mainly pertain to **workforce** issues such as diversity and representation by labor on the (newly designated) Board of Directors. As amended, the bill was passed by voice vote by the subcommittee on September 24, 1998, and was forwarded to the **full** committee on that date. No further action has been taken as of this date. No comparable legislation has been introduced in the Senate.

Scope of Report

This report **summarizes** the provisions of H.R. 22 as amended and agreed to by the Subcommittee on the Postal Service, and, where appropriate, compares them with current postal law. For the most part, the report omits provisions in the bill that change current law for the purpose of conforming language. Almost all postal law is contained in Title 39 of the U.S. Code; all titles and sections of current law referred to are part of the U.S. Code.

The report also summarizes comments by the Postal Service on the provisions of H.R. 22 excluding the amendments referred to above. For convenience and to distinguish it **from** the original version, H.R. 22 as agreed to by the subcommittee is sometimes referred to in the report as the Subcommittee's proposal or the proposal.

Title I — Redesignation of the Board of Governors, the Postmaster General, and the Postal Rate Commission

Section 101 — Redesignation of the Board of Governors

This section would change the name of the Board of Governors of the USPS to the “Board of Directors of the U.S. Postal Service” with members to be “Directors” rather than “Governors.”

Section 102 — Redesignation of the Postmaster General

This section would add “and Chief Executive Officer” to the title of Postmaster General.

Section 103 — Redesignation of the Postal Rate Commission

This section would change the name of the Postal Rate Commission to the “Postal Regulatory Commission.”

Title II — New System Relating to Postal Rates, Classes, and Services

Title II comprises a substantial part of the Subcommittee’s proposal and would effect a major change in current law. It would replace the basic rate-setting provisions of Chapter 36 of Title 39 of the U.S. Code with a new Chapter 37, and it would amend some portions of existing Chapter 36 as well. Inasmuch as Subtitle A establishes an entirely new process, it is discussed here as a whole rather than section by section

Current Law

The current Chapter 36 covers postal rates, mail classes, and services. Subchapter I deals with the Postal Rate Commission — its establishment, composition, terms of office of Commissioners, procedures, and administration. Subchapters II and III cover rates and classes of mail — how they are established and how they may be changed. Subchapter IV concerns postal services. Subchapter V covers miscellaneous postal matters.

Under current law, the Postal Service can initiate a rate case before the Postal Rate Commission, and offer its suggested new rate schedule, at any time. The Rate Commission then has 10 months to make its “recommended decision.” Aside **from** appeals (to the PRC or to a U.S. Court of Appeals), the rate schedule recommended by the Rate Commission ultimately must be adopted, unless the Postal Service Board of Governors votes unanimously (with certain findings) to override.

Various financial and operational reports are to be made to the Congress and other parties, subject to audit by the Comptroller General and independent accounting

firms. The PRC has access to these materials and can also conduct “discovery,” take testimony, etc. in rate cases. However, the Commission does not have explicit authority under current law to **specify** accounting systems or perform its **own** audits.

The overall financial target for each rate schedule is to break even, that is, for revenues to cover estimated total costs. Within that overall revenue projection, specific rates are to fit into a structure compatible with nine criteria (in Section 3622(b)). As these criteria are very general³ and somewhat in **conflict** with one another, and as no priority is indicated, the Rate Commission, in effect, tries to find a balance among them.

New Chapter 37

Subtitle IIA of the revised H.R. 22 would establish a new rate-setting regime that explicitly distinguishes between competitive and non-competitive service categories. The Subcommittee proposal’s generic term for a particular postal service, class of mail, or subclass of mail is “postal product.” Additionally, the proposal would authorize the Postal Service to provide “nonpostal products” via a separate corporation.

Postal products would be classified as competitive or non-competitive, and the proposal puts greater emphasis on **defining** and financing them separately. In general, non-competitive products would be subject to price-cap regulation, while the USPS would have wide discretion to price competitive services unilaterally. The Service would be authorized to distribute profits to officers and employees. However, the (newly designated) Postal Regulatory Commission could, if **performance** goals are not met, set aside up to half of a year’s profits for **future** price reductions. Both in Title II and in other titles the oversight powers of the PRC are increased.

Non-competitive Products. Within 18 months of enactment, an initial baseline for rates of **all** products (both competitive and non-competitive) would be set in a rate proceeding under slightly modified rules. If a proceeding under the current system is already pending, it would be superseded by the new baseline case.

For setting initial baseline rates, the proposal essentially uses the current **nine-criteria** approach for setting rates and fees for the various classes of mail and types of **service**,⁴ with three modifications: (1) subsection 3721(c) makes explicit that revenues are to be allowed only to the extent mentioned in current law, i.e., sufficient to provide services “under honest, efficient, and economical management;” (2) there would be no explicit allowance for “contingencies;” and (3) the PRC would recommend rates for all international mail (although the USPS could price **freely** those types **classified** as competitive).

³For example, a “**fair** and equitable structure.”

⁴The original version of H.R. 22, in contrast to current law, established an order of priority among the existing **nine** criteria, emphasizing particularly **cost**, demand, and quality of service. There were also some significant rewordings of the criteria.

Non-competitive products are **defined** and grouped in four baskets: (1) “Aunt Minnie” basic individual services⁵ such as letters and parcel post (on a single-piece basis), plus “special services” (e.g., certification of delivery), (2) other non-competitive first-class mail (such as presorted mailings), (3) periodicals (such as second class), and (4) all other standard classes.

A basic principle of price-cap regulation is that the caps are established by formula for a relatively long period, and serve as ceilings during that period. The proposal provides for a five-year period, during which the Postal Service would have full flexibility to price these services anywhere under the ceilings. The formula defines the **maximum** rate for each non-competitive product as the baseline *plus* general inflation *minus an* “adjustment factor” representing productivity improvements. General inflation is defined as the percent change in the Consumer Price Index (CPI).⁶ The **minimum** allowed for all products is the cost “attributable to” each product. Within these limits, there also is a limit on how rapidly real rates could change. That is, the price of a product could not be changed in a year by more than 2 percentage points above or below the year’s percentage change in CPI. The same percentage price *change* would be implemented for all the “baskets.”

The current system essentially is “cost-plus”: Costs are accepted as a given (subject only to their being *measured* correctly), and cost increases eventually are reimbursed in a new rate case. Hence, the incentive to control costs is somewhat muted. Under the proposed system, the USPS is supposed to live within defined limits that actually assume a **reduction** in costs by means of reasonably achievable productivity gains reflected in the “adjustment factors.” Moreover, the possibility of distributing profits is intended to provide tangible incentive to control costs.

Section 3733 would establish procedures for determining the adjustment factor, which would be based solely on likely-achievable productivity gains. With limited exceptions, the adjustment factor would be required to be negative or zero. An answer to the core question — how much cost-saving is to be expected — ultimately may depend on subjective judgments. Two sources of financial improvement are mentioned: “likely Postal Service productivity” and “specific sources of cost savings to the Postal Service.” While these phrases are open to interpretation, the former could be thought of as increases in output per hour of labor and/or of other inputs, while the latter conceivably could result from lower prices of inputs — plant, equipment, supplies, and labor.’

A positive adjustment factor may be established only upon a determination by the PRC that (a) new and significant spending obligations not **fully** funded through

‘Letters to or from a proverbial Aunt Minnie have become a metaphor for purely personal mail.

⁶In the original H.R. 22, the index is the Gross Domestic Product Chain-Type Price Index.

‘This does not constitute a statutory implication that wage rates might be reduced. An increase in wages is conceivable under the second justification for an exception to the requirement of a negative adjustment **factor**, discussed in the next paragraph. Moreover, as proposed by Rep. **Gilman**, H.R. 22 as adopted by the subcommittee states that it is the sense of Congress that the provision is not to interfere with collective bargaining.

appropriations have been statutorily imposed, or (b) postal revenues would otherwise be **insufficient** to enable the USPS, “under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States.” The PRC would be authorized to allow a transition to the new system for up to five years **after** the first adjustment-factor case.

While the proposal aims generally at having rates reflect costs, it has some provisions aimed at guaranteeing that certain services will continue to be available at reduced rates. Thus, Section 3722 specifies that categories of mail currently receiving reduced rates would not have to pay more than they would under the current system. Also, the “costs attributable” to any reduced-rate category (which constitutes their price floor) shall not exceed the estimated costs attributable for the most closely corresponding regular-rate category.* Finally, Subsection 202(i) would guarantee that the rate of overhead cost contribution (see below) would be no more than half that of the corresponding regular-rate categories.

Competitive Products and Non-Postal Products. The present mail classes that would be included in the competitive category of mail include: (a) priority mail; (b) expedited mail; (c) mailgrams; (d) international mail (except single-piece); and (e) parcel post (except single-piece). Sections 3761 through 3765 of the proposal set up procedures for classifying new products and transferring products between the noncompetitive and competitive categories. These sections also designate the PRC as the decisionmaking authority for such classifications and specify criteria (modeled after those used by the Federal Communications Commission) for determining when particular markets are sufficiently competitive to be classified as such. Existing free mailing privileges are specifically retained by the proposal.

The revised H.R. 22 would give the USPS pricing discretion over competitive products, subject only to two broad limitations. First, “each such product shall bear the costs attributable to such product.” Second, the competitive products collectively must bear at least an equal proportional mark-up for so-called “institutional costs” as do competitive and non-competitive products combined.⁹ The Postal Service has indicated that, under current rates, it would already be in compliance with the proposed collective mark-up requirement.

If revenues from a competitive product do not cover attributable costs, the shortfall (loss) would have to be made up in successive years from overall competitive product revenues. **If** a product persistently fails to cover the required costs, the PRC could order its discontinuance. Under the current regimen (with no distinction between “non-competitive” and “competitive” products), operating deficits have been recovered via subsequent rate cases, where losses on individual mail classes are

⁸**This might come into play if**, say, the relatively low volume of the reduced-rate category were estimated to cause **higher** per-unit costs than corresponding regular-rate mail.

⁹**Institutional** costs are costs not attributed to specific products, and include what is commonly called “overhead” Subsection 3744(b) would allow adjustments to the measure of attributable costs where deemed necessary for a more reasonable balance in institutional cost sharing between the competitive and non-competitive categories.

deemed “institutional” (overhead) costs rather than being attributed to (and recovered from) specific services. The purpose of these minimum price rules is to prevent the USPS from exploiting its unique position by predatory pricing of products in the competitive area, financed by excess profits from its non-competitive products.

The Subcommittee’s proposal would create a new off-budget fund within the Treasury solely for the revenues and expenditures associated with competitive products. This new “Competitive Products Fund” would start with the net worth of assets currently employed in providing the competitive services, as determined by the PRC.¹⁰ It would be able to borrow **from** the private sector but not **from** the Treasury, and its debts would not be obligations of the Government.

Market tests would be authorized for new competitive or non-competitive products (but not “non-postal products,” see *infra*), under which the USPS would be able to experiment **free** of many statutory constraints. Market tests would be allowed for products generating up to \$10 million in annual revenue, for two years (extendible to three), exempt from the normal pricing rules but not **from** other statutory requirements. Larger tests, up to \$100 million, would be permitted under rules adopted by the PRC to safeguard competitors and mailers.

Subsection **202(f)** would establish procedures (via a new Section 3641) for entering into “negotiated service agreements” with individual mailing organizations. These would be arrangements whereby mailers could get lower rates in exchange for performing additional functions (as in preparation or transportation) beyond those required of mailers under the standard rules. The PRC would have to pre-approve the agreements after public notice and comment, and the Postal Service would have to make substantially the same arrangements available to all other “similarly situated” mailers who request them.

The revised H.R. 22 **defines** a new category of products called “non-postal products,” and requires that any such products offered by the Postal Service be furnished through a new private for-profit subsidiary. The key characteristic of the new “USPS Corporation” is that it would be incorporated under state corporation law, financially separated from the existing Postal Service Fund and the government. This corporation is said to be modeled after quasi-governmental enterprises such as **Comsat**, **Conrail**, and the **U.S. Enrichment Corp.**

The authority of the Regulatory Commission would be enhanced in a number of respects. Section 3772 specifies reports to be made to the PRC, including an independently audited **financial** statement, market and cost data for **each product**, and measures of speed and reliability of service. The Regulatory Commission would have

¹⁰The intent appears to be not to divide the physical assets, but to separate the current balance of the **Postal** Service Fund in proportion to the use of assets.

“Non-postal products are all products that are not “postal products,” which are defined as “any letter, printed matter, and package, weighing up to 70 pounds, including incidental services ancillary to the accepting, handling, and delivery thereof.” The USPS would be permitted to continue to furnish non-postal products that were provided prior to 1994.

authority to specify the form and detail of **information**.¹² The proposal could increase the administrative and judicial review of rates for the competitive services, with the annual PRC audit review becoming a primary forum for hearing and acting upon public complaints about rates. PRC decisions would be appealable to the U.S. Courts of Appeal.

Section 3773 would authorize the USPS to pay bonuses out of its profits, but partially conditions this by PRC oversight. The Regulatory Commission would evaluate the attainment of performance goals and service standards. If these are lacking, up to one-half of the profits could be withheld from the bonus pool, and devoted instead to reducing rates charged for non-competitive services. Bonuses, which are required to be structured in a “fair and equitable” manner, could exceed the standard pay cap only **if USPS** profits are greater than 1 percent of total revenue, and the names of recipients exceeding the cap and their amounts are made **public**.¹³

Miscellaneous Provisions

Subtitle B of Title II of revised H.R. 22 would make several changes of an administrative nature in current law related to the rate and service restructuring provisions in Subtitle A. Thus, Section 211 would allow the Commissioners of the PRC, any PRC-appointed administrative law judge, and any designated PRC employee to administer oaths, examine witnesses, take depositions, and receive evidence. Further, the PRC chairman any PRC commissioner designated by the chairman and any PRC-appointed administrative law judge would be authorized to issue subpoenas to require the provision of evidence. There would be some qualifications to these powers, however.

To be consistent with the greater responsibilities and powers to be given USPS Directors and the PRC, Section 212 specifies a selection procedure and formal **qualification** requirements for USPS Directors and PRC Commissioners. In addition, one of the Directors would be required to be nominated unanimously by specified labor organizations. Section 213 aims to strengthen the PRC appropriations system by requiring a **specific** appropriation for the PRC **from** the Postal Service Fund.

To be consistent with the “liberalization” aspects of Subtitle A, Section 214 would authorize the Postal Service to forward in the same manner as other postal customers the mail of addressees who have arranged with commercial mail receiving agents to accept their mail. Current law requires such agents to add postage and resubmit to the USPS items requiring forwarding. Section 215 would authorize the Postal Service to request **from** the PRC that “requester” periodicals get **2nd** class rates. Now, nonprofit periodicals must have a subscriber list to qualify for the lower rates.

¹²**The** PRC is also directed to study the attribution of costs and revenues to products. At present, only 65% of total costs **are** being attributed to **specific** services, leaving the rest to be allocated by the essentially mechanical device of “mark-up” factors.

¹³**More** specifically, if **any** bonuses cause a recipient to exceed the pay cap, the USPS would have to report the name of the person, the amount of the bonus, the pay cap limitation., and amount the cap was exceeded.

Competitive Dynamics and Constraints

Beyond pricing and financial matters covered in Title II but closely related, the Subcommittee's proposal has several provisions further defining the balance between dual roles of the redrawn Postal Service — a market-driven competitor and a **quasi**-public body with governmental powers and obligations. The objective of these provisions, described below under Titles III, V, and VI, is to put the Postal Service on a so-called "level playing field" with its private sector competitors. Revised H.R. 22 also would modify the opportunities and constraints of non-competitive operations.

Title III — General Authority

This Title contains several important provisions aimed at spelling out rules of doing business for a newly fortified and "**flexified**" Postal Service.

Section 301 — Rulemaking Authority

To avoid a possible interpretation that the Postal Service could adopt regulations implementing parts of the U.S. Code not related to postal service, Section 301 would limit the rulemaking function of the USPS to those rules that pertain to its operation under Title 39 of the Code.

Section 302 — General Duties

Section 302 relates to an aspect of the ratemaking changes that the revised H.R. 22 would introduce. Inasmuch as single-piece international mail would be a noncompetitive product, Section 302 would apply to international mail the same non-discrimination provisions currently applied to domestic mail.

Section 303 — Employment of Postal Police Officers

Currently, the USPS is not permanently authorized to employ postal police officers to guard buildings and areas owned or occupied by the Postal Service; Congress grants temporary authority each fiscal year to employ such officers through the appropriations process.

Section 303 would provide permanent authority to the USPS to employ postal police officers, and would give these officers the powers of special policemen. Furthermore, the section would authorize the CEO of the USPS (or his designee) to take any action that current law now authorizes the Administrator of General Services to take under Section 2 and 3 of the Protection of Public Property Act of June 1, 1948 (62 Stat. 281).

Section 304 — Date of Postmark To Be Treated as Date of Appeal in Connection with the Closing or Consolidation of Post Offices

Current law allows individuals served by any post office to appeal to the Postal Rate Commission (PRC) regarding a Postal Service decision to close or consolidate that office. The appeal, however, must be received by the PRC within 30 days after decision is made available to such persons. Section 304 of the proposal would change the definition of receipt of an appeal sent through the mail or by other **lawful** means to the postmark date, or other appropriate documentation, rather than the date of receipt by the PRC.

Section 305 — Unfair Competition Prohibited

Section 305 relates to the intent of the Subcommittee's proposal to prevent the Postal Service **from** engaging in various abuses of its powers in relation to its competitors. It would add a new section to Chapter 4 of Title 39, U.S. Code that would prohibit the USPS from the following types of actions: (1) giving itself or any other entity a competitive advantage through regulations or an unlawful competitive advantage in any other action; (2) regulating competition or engaging in any regulatory or enforcement activity with respect to actions or practices that are subject to the antitrust laws; (3) using information it obtains **from** a person to that person's disadvantage by disclosing it, or using it to offer a product or services based on it, without consent or by not independently obtaining it; and (4) compelling the disclosure, transfer, or licensing of intellectual property.

The PRC would be required to prescribe and enforce the regulations to carry out the purposes of this new section; and it also would have the authority to order the rescission of any regulation.

Section 306 — International Postal Arrangements

Section 306 addresses several aspects of the role of the Postal Service in an international context. Under current law, the Postal Service, as U.S. representative in some inter-governmental organizations, has the opportunity to influence international law in a way that suits its commercial objectives. This section would establish policy guidelines for future international postal agreements, separate regulatory and operational functions, and make the Secretary of State responsible for formulating, coordinating, and oversight of foreign policy related to international postal services and other international delivery services. The section bars the Secretary of State **from** negotiating or concluding any treaty or other agreement with respect to any competitive product granting preference to any public or private entity, including the Postal Service. The Secretary of State would be required to consult with the U.S. Trade Representative and the Commissioner of Customs in carrying out the provisions of this section.

The section also would authorize the USPS to enter into international mail agreements or contracts without the consent of the President, provided such agreements or contracts are contractual in nature and do not purport to be

international law. The USPS would be required to **notify** the Secretary and the PRC of any agreements with agencies or subsidiaries of foreign governments.

Regarding the importing or exporting of mail shipments, Section 306 would require the USPS to follow the same procedures and laws applicable to similar shipments transmitted by or to private companies. The Customs Service and other federal agencies would be authorized to deny shipments imported from a foreign country under special arrangement, unless similar arrangements are also available to private companies. Thus, internationally, the USPS would have to comply with customs and tax obligations as if a private firm.

Section 307 — Suits By and Against the Postal Service

A major part of the thrust at leveling the competitive playing field, Section 307 would subject the Postal Service to the antitrust and other laws to various degrees. The Postal Service, in activities related to non-monopoly products, would be subject to federal antitrust and unfair competition laws and regulations, no longer have sovereign immunity **from** suit in federal court for law violation, and be liable for actions in tort in the same manner as a private company. And all Postal Service activities would be placed under federal law prohibiting fraudulent business practices (the Lanham Act). Postal Service vehicles used in the provision of competitive products would be subject to local parking regulations, and all USPS facilities would be subject to local zoning, planning, land use, and building regulations and codes.

The Postal Service would be required to defend itself in most court actions related to the provision of competitive products, cases involving administrative subpoenas issued by the PRC, and appeals of decisions by the PRC or Directors. Any judgment against the government of the United States arising out of activities of the Postal Service would have to be paid out of USPS funds, **with** some provisos. Judgements arising out of violations involving competitive products would have to be paid **from** revenues from competitive products.

Title IV — Miscellaneous Provisions Relating to the Budget and Appropriations Process

Section 401 — Benefits Under Chapter 81, Title 5, U.S. Code, for Officers and Employees of the Former Post Office Department

Public Law 105-33 repealed authority for transitional appropriations intended to ease the conversion from Post Office Department to the U.S. Postal Service, putting officers or employees of the former Post Office Department receiving compensation for work injuries benefits under Chapter **81** at risk of loss of those benefits. This section would require that the USPS be obligated to treat such individuals in the same way as USPS officers and employees receiving such benefits.

Title V — Transportation, Carriage, or Delivery of Mail

Section 501 — Obsolete Provisions

Chapter 52 of Title 39, U.S. Code, contains some language citing and pertaining to the abolished Interstate Commerce Commission and other matters, including those related to the surface transportation of mail. Also, current law allows the Postal Service to enter into special contracts for surface transportation with any carrier or person, without advertising, for bids and for periods not exceeding 4 years and, in some cases, 6 years. Section 501 would repeal the outdated Chapter 52 and remove the time limitation on postal transportation contracts, giving the USPS flexibility to enter into contracts of durations that “it deems appropriate or advisable.”

Section 502 — Expanded Contracting Authority

While interstate air transportation of mail (outside of Alaska) has been deregulated, international air transportation of mail is still regulated by the Department of Transportation. Under this regimen, the Secretary has the right to disapprove a contract, and U.S. flag-certified carriers generally are entitled to, and get, preference, reducing competition and tending to increase rates. Section 502 of the Subcommittee’s proposal would allow the USPS to contract **freely** for the transportation of mail by **aircraft**, with some exceptions. However, Department of Transportation aircraft certification provisions relating to foreign air transportation of the mail would be retained.

Section 503 — Private Carriage of Letters

Congress has passed a number of laws under the perceived authority of the Constitution (Article I, Section 8, Clause 7)¹⁴ that, to a varying extent, have prohibited private carriage of mail (the so-called Private Express Statutes). Over time, this mail monopoly has been redefined and certain exemptions have developed. At present, the monopoly covers first- and third-class mail, except for “urgent mail.” Laws regarding the carriage of mail and private express for letters and packets are contained in Chapter 83, Section 1693 through 1699, Title 18, U.S. Code. Title 39 allows, at the option of the Postal Service, certain letters to be carried out of the USPS mail system when certain conditions of enveloping, addressing, sealing, stamping with required USPS postage, and cancellation of such stamps are met.

Section 503 of the proposal would narrow the scope of the monopoly over “letters” in certain cases. A “letter” would not include items over 12% ounces in weight where the amount paid for private carriage is at least six times the postage charged for the first ounce of first-class mail (\$1.98 as of 1999). This provision would become effective the **first** day of the first year beginning on or after the date as of which the baseline rates are determined under Title II.

¹⁴**There** has been controversy over whether the framers of the Constitution intended to establish the postal system as a **federal** monopoly, empower Congress to do so, or to authorize a federal system subject to whatever market competition might arise.

Section 504 — Repeal of Section 5403

This section would repeal Section 5403 of Title 39, which allows the USPS to unilaterally impose **fin**es on carriers of international mail for delay of the mail or other delinquencies.

Title VI — Studies

Section 601 — Employee-Management Relations

Employee-management relations in the Postal Service are widely considered to be needing significant improvement. This section of the bill agreed to by the subcommittee would mandate the Postal Service's (newly designated) Board of Directors to contract for an independent study of how employee-management relations within the USPS may be improved. It specifies that the conductor of the study shall be the National Academy of Public Administration (**NAPA**).

The provision would require that labor, supervisory, and management organizations be involved in the study's design be consulted periodically on the study's progress, and be **allowed** to review and submit written comments on the final report. That report is to be submitted to the President, the Congress, the Postal Service, and the labor, supervisory, and managerial organizations of the Postal Service within 12 months of signing the contract.

Section 602 — Universal Postal Service

This section would direct the Postal Service to conduct a study aimed at developing recommendations as to “the appropriate scope and standards” for universal postal services to be assured by the U.S. Government, and submit a written report setting forth recommendations and the reasons. Among the matters required to be considered are standards of service quality, the role of new technologies, and “the evolution of alternative means of meeting the public interest objectives” specified by the current Postal code.

A **proceeding** (modeled after that mandated by the Telecommunications Act of 1996) is specified. The study would have to begin within a month of enactment of the provision, be completed within 18 months **after** commencement, and be submitted to the President, the Congress, and the (newly designated) Postal Regulatory Commission. Recommendations would have to be provided for each class of delivery services, **specifying** minimum standards of service. Such a study could affect the cost structure of the USPS' competitive and non-competitive operations if changes in service quality and mandated rates ultimately result.

Section 603 — Equal Application of Laws to Competitive Products

Section 603 would require that the Department of Justice prepare and submit to the President and Congress within a year of enactment a report identifying federal and state laws that apply differently to the newly designated competitive products of

the USPS and similar products provided by private firms. The report would have to include recommendations to end such (legal) discrimination.

Section 604 — Greater Diversity in Postal Service Executive and Administrative Schedule Management Positions

This section would require two actions by the Board of Directors with respect to diversity in the USPS workforce. The Board is to (1) study and submit to the President and Congress within a year of enactment a report concerning the extent to which women and minorities are represented in USPS supervisory and management positions, and (2) take measures necessary to ensure that, in conducting performance appraisals of supervisory or managerial employees, appropriate consideration be given to meeting **affirmative** action goals, achieving equal employment opportunity requirements, and implementing plans designed to achieve greater diversity.

Section 605 — Plan for Assisting Displaced Workers

This section would require the Postal Service to develop and be prepared to implement, within one year after enactment, a plan under which re-employment assistance shall be afforded to employees displaced as a result of automation or privatization of any USPS function. A written report describing such a plan is to be submitted to the Board of Directors within a year of enactment.

Section 606 — Contracts With Women, Minorities, and Small Businesses

This section would require the USPS Board of Directors to study and, within a year of enactment, report to the President and to Congress the extent to which the Postal Service has entered into contracts or subcontracts with women, minorities, and small businesses.

Title VII — Inspectors General

Section 701 — Inspector General of the Postal Regulatory Commission

This section would establish an office of and the position of Inspector General (IG) in the Postal Regulatory Commission comparable to that in many other federal government entities. It would authorize the IG to select, appoint, and employ officers and employees, including any temporary or intermittent services of experts or consultants for the Commission. The **first** Inspector General for the PRC would have to be appointed within 180 days of enactment.

Section 702 — Inspector General of the United States Postal Service To Be Appointed by the President

Prior to January 1997, the Chief Postal Inspector was charged with the task of monitoring USPS operations and Postal Inspection Service activities. The Omnibus Consolidated Appropriations Act of 1997 (P.L. 104-208) created an independent Inspector General for the USPS with oversight responsibility for **a11** postal activities, including those of the Postal Inspection Service. The Postal IG reports to the Postal Board of Governors, who have authority and direction of the IG, with respect to audits, investigations, or the issuance of subpoenas requiring access to sensitive information.

Section 702 would require that the Inspector General of the USPS be appointed by the President, with Senate confirmation, and be under the general supervision of the Postmaster General. This section would authorize the Postal IG to audit or oversee Postal financial statements and independent public accountants, as necessary; and it would require the Postal IG to report investigative activities of the Postal Service to Congress semiannually, as currently required by the Inspector General Act.

Title VIII — Law Enforcement

Title VIII of the revised H.R 22 would amend or otherwise modify a variety of existing sections of Title 39, United States Code, that pertain to law enforcement.

Section 801 — Apply Assault Statutes to Contract Employees

In contrast with current law, this section in effect would include persons entrusted with mail under contract with the Postal Service within the protection of law given regular federal and postal employees against the threat of assault.

Section 802 — Sexually Oriented Advertising

This section would strengthen and broaden existing legal deterrence to sending unsolicited sexually-oriented advertising by mail by authorizing a civil monetary **penalty** of \$500 to \$1,500 for each piece of mail violating Section 3010 of Title 39 of the U.S. Code. It would repeal existing Section 3008, deemed too cumbersome.

Section 803 — Allow USPS To Retain Asset Forfeiture Recoveries

Current law requires Postal Service asset forfeiture recoveries be deposited in the U.S. Treasury, and then returned to the USPS as agreed by the two entities. Section 803 would allow the Postal Service to deposit recoveries for which the USPS had primary responsibility for the investigation directly to the Postal Service Fund.

section 804 — Hazardous Matter

This section would authorize the Postal Service to institute civil actions against persons mailing or causing to be mailed materials deemed to be hazardous. Civil penalties of up to \$25,000 per violation would be authorized. Current law contains no provision for penalties for the *mailing* of hazardous matter.

Section 811 — Stalking Federal Officers and Employees

Existing law has no provision specifically related to the stalking of government employees. Section 811 would **specify** the stalking of federal officers and employees, including Postal Service employees, as punishable by a fine **and/or** imprisonment.

Section 812 — Nonmailability of Controlled Substances

Section 3001 of Title 39 deals with nonmailable matter, but does not specifically deal with controlled substances. This section of the Subcommittee's proposal would make mailing controlled substances, as defined by the Controlled Substances Act, a felony punishable by fines, imprisonment, or both.

Section 813 — Enhanced Penalties

Section 994 of Title 28 of the U.S. Code deals with sentencing guidelines for the U.S. Sentencing Commission. Section 813 of the proposal would direct the Sentencing Commission to toughen its sentencing guidelines for volume mail thefts, and to assess the dollar loss in unauthorized credit card use as equal to the greater of the amount of unauthorized charges or of the credit line.

Section 814 — Postal Burglaries

Current law does not cover robberies of postal equipment not located in postal facilities. This section would include the robbery of post office boxes and postal stamp vending machines that are not in postal facilities; and it provides for penalties for the receipt or possession of property obtained through these types of violations.

Section 815 — Mail, Money, or Other United States Property

Section 815 would increase the punishment for robberies of postal (and other government) property, including those that result in the death of any person. Penalties would be equivalent to those for bank robbery as specified in the Violent Crime Control and Law Enforcement Act of 1994. Subsection (a) of Section 2114, Section 501, and Section **1711** of Title 18, U.S. Code, would be amended,

Non-Legislative Branch Comments

The Postal Service regards H.R. 22 (excluding the amendments introduced at markup) as addressing many of the issues it considers “essential to positive reform” of the postal system. It praises several specific aspects: clarification of USPS’ role vis à vis private services; modernization of rate setting; maintenance of the monopoly (in some services); retention of the Postal Service as a competitor in some **non-monopoly** markets; emphasis on avoidance of cross-subsidization; and the provision for incentive compensation to exceed the current pay ceiling.

However, the USPS views several aspects of H.R. 22 as needing further attention. It asserts that reliance on the principle of equivalent revenue contribution by competitive and noncompetitive services ignores the fact that markets set prices, and that mandated relative revenue contributions at any point in time consequently would be arbitrary and administratively unmanageable. The USPS views the application of the same price cap to all non-competitive products as undoing the concept of product baskets and reducing the incentive for cost control. Also regarding non-competitive product pricing, it sees the rules pertaining to the “2 percent rate band” as limiting flexibility. The USPS believes that the Competitive Products Fund would have inadequate access to capital. And it contends that H.R. 22 does not sufficiently spell out the mission of the Postal Service, and thereby increases the uncertainties associated with the proposed changes in rate-setting and USPS structure.”

The Clinton Administration, while it has commented in writing over the past few years regarding specific provisions of H.R. 22 and its predecessor, has no stated position on the bill in general.

“This synopsis of Postal Service comments is based upon a letter from Postmaster General William J. Henderson to John M. McHugh, Chairman of the **Subcommittee** on the Postal Service of the House Committee on Government Reform and Oversight. The letter is dated September 23, 1998.